



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

MAY 17 2007

THE ASSISTANT SECRETARY

GEN-07-03

FP-07-07

Subject: Update on Consolidation Loan Issues

Summary: This letter responds to questions we have received as a result of the Department's previous guidance concerning the completion and return of Loan Verification Certificates (LVCs).

Dear Colleague:

On December 1, 2006, the Department issued a Dear Colleague Letter (GEN-06-20; FP-0-16) to remind program participants of the rules governing the consolidation of loans following recently enacted legislation. Since we issued that letter, we have received a number of questions from borrowers and lenders on this topic. For this reason, we are providing this updated guidance.

In Attachment C to the December 1, 2006 Dear Colleague Letter, we listed the limited circumstances in which a loan holder is not required to complete a Loan Verification Certificate (LVC) and instead must provide the requesting lender with a written explanation for not completing the form. The Department's regulations at 34 C.F.R. §682.209(j) allow a loan holder that cannot, because of certain limited reasons, provide the completed LVC within the 10 business-day period to explain in writing to the intended consolidating lender, within the same 10 business-day period, why it cannot do so. One such circumstance is the occurrence of a technical problem, such as a computer malfunction, that prevents the holder or servicer from providing the information within the 10 business-day period. In that case, the loan holder must provide the information as soon as the technical problem is resolved. The only other reasons noted in that Dear Colleague Letter for not completing an LVC were when:

- The loan holder never held the loan;
- The loan holder held the loan but has assigned it to a guaranty agency;
- The loan holder sold the loan;
- The loan the borrower wishes to consolidate is more than 270 days delinquent and a default claim has been submitted to the guaranty agency;
- The loan has not been fully disbursed or the borrower is not in grace or repayment status;
- A judgment has been entered against the borrower on the loan that the borrower wants to consolidate; or
- The loan the borrower wishes to consolidate is subject to collection by wage garnishment.

In each circumstance listed above, the loan holder must provide the requesting lender with an explanation of why the LVC is not being completed.

As a result of comments received since we issued the December letter, we have identified two additional circumstances in which a loan holder can decline to complete an LVC. These are when:

- The loan holder had within the last 90 days completed an LVC on the borrower's loan for another lender, thus indicating that the borrower may have more than one consolidation loan application outstanding.
- The borrower appears to have no eligible loans other than a single consolidation loan held by the loan holder (e.g., NSLDS or other available records indicate that the borrower has already consolidated all eligible loans).

As with the earlier listing, for each of these two additional circumstances the loan holder must provide the requesting lender, within the 10 business-day period, with an explanation of why the LVC is not being completed with payoff information. For these two additional conditions only, the loan holder must also notify our Federal Student Aid Financial Partners staff of the holder's decision not to complete the LVC. To provide this notification, the loan holder must send an email to "LVC.Referral@ed.gov" that includes a password protected Winzip file. The password protected file must include the name of the loan holder submitting the file, a contact name and phone number, the name and lender ID (LID) number of the requesting lender, the borrower's name and social security number, the type of loan held, and the reason why the LVC was not completed. When choosing to password protect the file, the Winzip software will ask what encryption algorithm to use; select AES encryption. The password must contain at least 8 characters, including numeric and alphanumeric characters, upper and lower case letters and special characters. Send the password by separate email to the same address (LVC.Referral@ed.gov).

Once the explanation is provided to the requesting lender, if the requesting lender provides additional information to the loan holder that supports the borrower's eligibility to consolidate the loan(s), the holder must complete the LVC within 10 business days of receipt of that information. For the first circumstance noted above, such information would be a written statement from the borrower stating that the borrower has cancelled any previous consolidation loan applications. For the second circumstance, the requesting lender could provide documentation showing that the borrower has one or more additional loans that will be included along with the single consolidation loan in a new consolidation loan.

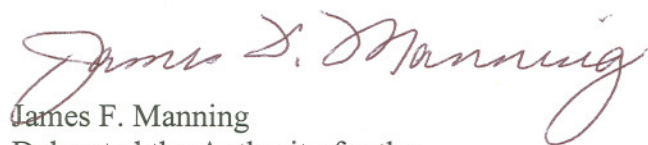
The Department intends to monitor the LVC process closely and will take appropriate enforcement actions if a consolidating lender has a pattern of sending LVC requests for borrowers who are not eligible for a consolidation loan, or if a loan holder has a practice of refusing to complete LVCs for borrowers who are eligible to consolidate their loans.

On another matter, we are concerned that some LVCs sent to loan holders, particularly those sent by third-party servicers and by entities making loans under a lender trustee agreement, do not include the name of the consolidating lender to which the borrower has submitted a consolidation loan application and which will be making the consolidation loan. An LVC may not be submitted to a loan holder and cannot be completed by the holder, unless the borrower has submitted a properly completed and signed consolidation loan application to the requesting lender legally authorizing the release of the borrower-specific information noted on the LVC. The inclusion of the single consolidating lender's name and Lender ID on the LVC is considered certification by that lender that it has received a properly completed consolidation application from the borrower. Of course, if that lender cannot document to the Department's satisfaction, that it, or its authorized agent, received the completed and signed consolidation loan application before the LVC was requested, it will be subject to appropriate sanctions. Therefore, if a loan holder receives an LVC that does not include the name and lender identification (LID) number of the eligible lender or trustee lender that received the borrower's application under Item 19 of the LVC, it should not provide any information related to a borrower's loan and should instead provide a written explanation to inform the requestor as to why it is not completing the LVC. This is the only additional circumstance, beyond those noted in this letter, under which a loan holder may provide a written explanation to the requestor rather than submitting a completed LVC.

Finally, we have been advised that some consolidating lenders (or their agents) have asked borrowers to complete and sign a consolidation loan application prior to the borrower's loans being eligible for consolidation (e.g., while the loans are still in an in-school status and have not entered the grace period). Such practices are not permitted, since the borrower certifies in the application that the loans are eligible for consolidation.

We thank you for your cooperation. If you have any questions on the issues discussed in this letter, please contact Pamela Moran by email at pamela.moran@ed.gov or by phone at (202) 502-7732.

Sincerely,



James F. Manning
Delegated the Authority for the
Assistant Secretary for Postsecondary Education